

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII,
THE CITY AND COUNTY OF HONOLULU,
AND
THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as "MOA") is entered into respectively as shown below but effective retroactive as of the 19th day of Sept., 2006, by and between the DEPARTMENT OF TRANSPORTATION, State of Hawaii, (hereinafter referred to as "DOT"), whose post office address and place of business is 869 Punchbowl Street, Honolulu, Hawaii 96813, the CITY AND COUNTY OF HONOLULU (hereinafter referred to as "the City"), whose post office address and place of business is 650 South King Street, Honolulu, Hawaii 96813, and the DEPARTMENT OF LAND AND NATURAL RESOURCES, State of Hawaii (hereinafter referred to as "DLNR"), whose post office address and place of business is 1151 Punchbowl Street, Honolulu, Hawaii 96813.

WHEREAS, the purpose of this MOA is to provide an opportunity for the City, to participate in the mitigation strategies and benefits of Incidental Take License No. ITL-05, as issued on March 18, 2005, to the "holder" of this license, DOT; and,

WHEREAS, the *Habitat Conservation Plan for Abutilon menziesii at Kapolei* (hereinafter referred to as "HCP"), March 2004, was a requirement for an Incidental Take License, in accordance with Chapter 195D, Hawaii Revised Statutes; and,

WHEREAS, the HCP was approved by the State Board of Land and Natural Resources on April 8, 2004, and it prescribes a series of mitigative strategies to address the impacts on the endangered species population of Abutilon menziesii and serves as an "umbrella plan" to promote the recovery of this endangered species; and,

WHEREAS, the HCP indicates that other East Kapolei developers may become joint permittees or "cooperators" of Incidental Take License No. ITL-05 by executing a Certificate of Inclusion and complying with associated responsibilities and requirements; and,

WHEREAS, the City is proposing to construct various facilities in East Kapolei, which will impact the Kapolei population of Abutilon menziesii; and,


WHEREAS, DLNR has agreed with DOT to implement the management of the Abutilon menziesii populations as outlined in the mitigative strategies of the Abutilon menziesii HCP; and,

WHEREAS, DLNR has successfully managed and maintained existing populations of Abutilon menziesii since the 1st day of August 2001.

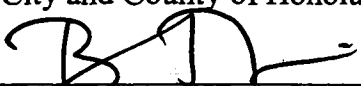
NOW THEREFORE, in consideration of the premises stated above, the parties deem it mutually advantageous and desirable to cooperate and hereby agree as follows:

1. The City shall transfer to DLNR a lump sum amount of THIRTY THOUSAND AND NO/100 dollars (\$30,000.00), which is intended to augment the "contingency fund", as more fully described on pages 29 through 31 of that certain final HCP, dated March 2004, prepared by DOT. This fund will be used for the following purposes: (1) to finance unanticipated costs incurred by DLNR in the implementation of the HCP measures; and, (2) to fund management and monitoring of three 'wild' populations beyond the 20 year timespan of the HCP. The funds provided shall be able to accrue interest, and any interest earned on the funding, as transferred to DLNR, shall become a part of the total funding provided by the City, to be utilized in accordance with the purposes of the HCP. If a portion of the funding is unexpended when the HCP's "overall success criteria" is achieved, this portion of the funding shall be returned to the City.
2. Upon notification from DLNR that the aforementioned funds are available, DOT will issue to the City the Certificate of Inclusion, and the City thereby agrees to comply with the requirements and conditions as stipulated in the HCP, Incidental Take License No. ITL-05, and Certificate of Inclusion. If the City does not comply with these conditions and requirements, this MOA or the Certificate of Inclusion will be terminated and the City will be required to immediately discontinue its removal or "take" of *Abutilon menziesii*; in addition, if "take" of *Abutilon menziesii* on the City's East Kapolei properties has occurred, whether before or after termination, the funding as transferred to DLNR, or any portion thereof, will not be returned to the City. The terminated MOA or Certificate of Inclusion may be reissued by a subsequent written agreement between DOT and the City.
3. Within 30 days of the execution of this MOA, DOT will schedule a meeting with DLNR in order to initiate processing of the Certificate of Inclusion for Incidental Take License No. ITL-05. In accordance with the Certificate of Inclusion, the removal or "take" of *Abutilon menziesii* will only be authorized for the City's lands, and hence, within 10 days of the execution of the MOA, the City will furnish DOT with maps, exhibits and descriptions of the proposed development and will appropriately label these documents.
4. Approximately 30 days prior to the start of construction of its proposed facilities, the City will contact DLNR and assist DLNR personnel with the removal of the *Abutilon menziesii* within its property and with the transporting of these plants to a designated site. The construction of facilities or improvements will not commence until proper clearances are provided by DLNR; such clearances will not be unreasonably delayed or withheld.
5. Within 30 days of the removal of the last *Abutilon menziesii* plant, the City will submit a report to DOT and DLNR, which will include the following information: (a) number of *Abutilon menziesii* plants removed; (b) the original location of each *Abutilon menziesii* plant; and, (c) the final disposition of each *Abutilon menziesii* plant.
6. After funds from the City have been transferred as described above, DOT will furnish the City with annual progress reports from DLNR.
7. This MOA may be amended or terminated at any time by written consent of the parties of this agreement.

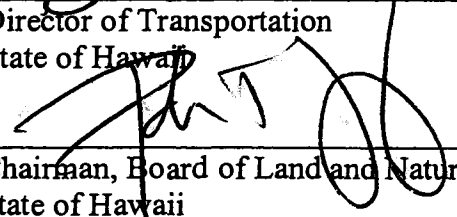
IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first written above.

BY 
Director, Department of Design and Construction
City and County of Honolulu *OK for OK W*

Date 5/4/06

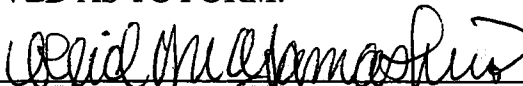
BY 
for Director of Transportation
State of Hawaii

Date 7-27-06


BY 
Chairman, Board of Land and Natural Resources
State of Hawaii

Date 9/19/06

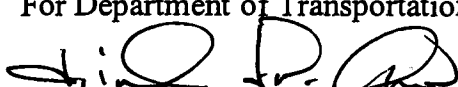
APPROVED AS TO FORM:

BY 
Corporation Counsel
For City and County of Honolulu

Date 5/2/06

BY 
Deputy Attorney General
For Department of Transportation

Date 7/11/06

BY 
Deputy Attorney General
For Department of Land and Natural Resources

Date 9/14/06